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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1992/2010

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	Leonid Sudalenko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	17 April 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 October 2010 (not issued in a document form)
Date of adoption of Views:	27 March 2015
Subject matter:	Right to be elected to public office; fair trial
Substantive issues:	Fair hearing by a competent, independent and impartial tribunal; freedom of expression; peaceful assembly
Procedural issues:	State party's failure to cooperate; insufficient substantiation of claims; non-exhaustion of domestic remedies
Articles of the Covenant:	2, para. 3; 14, para. 1; 19; 21 and 25
Articles of the Optional Protocol:	2; 5, para. 2 (b)

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (113th session)

concerning

Communication No. 1992/2010*

Submitted by:	Leonid Sudalenko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	17 April 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 March 2015,

Having concluded its consideration of communication No. 1992/2010, submitted to the Human Rights Committee by Leonid Sudalenko, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Leonid Sudalenko, a Belarusian national, born in 1966. He claims to be a victim of violations by Belarus of his rights under articles 2, paragraph 3; 14, paragraph 1; 19; 21 and 25 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented.

Facts as submitted by the author

2.1 The author submits that, as a member of the United Civic Party of Belarus (opposition party), he was running as a candidate for the position of councillor (deputy) on the Gomel Region Council in the elections held on 14 January 2007. He and his supporters documented serious violations of the electoral legislation prior to the elections as well as during the elections.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

2.2 Mr. Sudalenko submits that he requested that his representative, Chair of the Gomel Region division of the United Civic Party, be included as a member of the Elections Commission for electoral district No. 14. He claims that the Elections Commission refused to include his representative. Moreover, according to the calculations carried out by Mr. Sudalenko's representatives at various polling stations for electoral district No. 14, the official tallies of voters were exaggerated. The author and his representatives counted 3,912 voters, while the Elections Commission reported 6,568 voters.

2.3 The author further submits that, on 28 December 2006, he asked the State-owned newspapers *Gomelskaya pravda* and *Gomelskie vedomosti* to publish his election-related articles and speeches, with the aim of informing voters of his position on various issues, however, both newspapers refused to publish his articles. The editors of the newspapers, referring to article 46 of the Election Code of Belarus, stated that, according to the legislation, all candidates had the right to a five-minute time slot on the State-owned local radio, free of charge. The editor of *Gomelskie vedomosti* specifically stated that the newspaper did not publish election-related materials.

2.4 Mr. Sudalenko claims that during his election campaign, he requested permission to meet with potential voters in a specific location in his district — an open square at a popular venue in the centre of the city.[1] The city authorities, in a reply dated 30 December 2006, rejected his request and informed him that there was only one designated location for conducting public meetings, which is located outside of the city centre. The author submits that he was not allowed to hold a meeting with his potential voters because the authorities knew about the planned participation in the event of former presidential candidate Aleksandr Milinkevich.

2.5 The author submits that, on 15 January 2007, he and his representatives filed complaints with the Gomel Region Elections Commission, describing the violations to the election law. They called for the results of the 14 January 2007 elections to be declared invalid. On 17 January 2007, the Elections Commission informed the author that his complaints would be examined promptly. Despite that assurance, the Elections Commission published the official results of the elections in the local newspaper on 18 January 2007.

2.6 The author submits that, on 22 January 2007, the Elections Commission rejected his complaints. The Commission stated that his grievances were not based on the election laws of Belarus. It argued that, according to articles 11 and 34 of the Election Code of Belarus, there are no requirements in the law to include the representatives of all candidates in all the election commissions. Such commissions are formed by representatives of political parties and ordinary citizens, based on the decision of the Commission itself, and refusal or approval to include someone in the Elections Commission does not have to be justified. The Commission also stated that it had reviewed the voters' list for electoral district No. 14, spoken to the Chair of the Regional Election Commission and interviewed observers at the polling stations. It concluded that the election laws had not been violated. The Commission therefore refused to invalidate the results of the elections.

2.7 On 25 January 2007, the author filed an appeal against the decision of the Elections Commission before the Gomel Regional Court, listing all the alleged violations mentioned above and requesting that the elections in his electoral district be declared invalid. He also argued that the city authorities had unreasonably restricted his right to meet with potential voters on 30 December 2006 as he had requested.[2] On 29 January 2007, the Gomel

[1] The open square near the cultural centre, "Festivalnaya", at Rechitskoe Shosse, No. 27.

[2] The author refers to Gomel City Executive Committee decision No. 318 of 11 April 2006, which requires that all public meetings be held in only one location, that is, the square near the Culture Palace on Yubileinaya street, No. 48.

Regional Court refused to hear the case, stating that it did not have jurisdiction over such complaints. Regarding the violations in the process prior to the elections, it stated that such complaints should be filed in court "no later than seven days before the election date"; regarding the alleged violations during the election itself, it stated that the complaints should be filed with the relevant election commission as only those election commissions have the right to declare elections invalid.

2.8 On 2 February 2007, the author appealed the refusal before the Supreme Court of Belarus, which, on 5 March 2007, rejected his complaint and upheld the decision of the Gomel Regional Court, re-affirming that the courts do not have jurisdiction over such cases, and that the author has no standing in the court. The author also attempted to file a request for supervisory review with the Presidium of the Supreme Court, which was rejected by letter of 26 March 2007. The author explains that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author submits that by refusing to hear his complaint regarding irregularities in the electoral process in his electoral district, the State party did not provide him with effective means of protection of his Covenant rights and therefore violated its obligations under article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

3.2 The author submits that the refusal of the courts to hear his complaint against the decision of the Elections Commission violated his right to a fair hearing by a competent, independent and impartial tribunal established by law in order to determine his rights in a suit at law. The author contends that the courts in Belarus are not independent or impartial.[3] The refusal to review his important and well-documented arguments regarding violations of the election legislation of Belarus breached his rights under article 14, paragraph 1, of the Covenant.

3.3 Regarding the publication of his articles relating to his election campaign, the author claims that the refusal of the State-owned media to publish them was due to the fact that he had criticized the regime and because of his association with former presidential candidate Aleksander Milinkevich. The author maintains that the refusal constitutes a violation of his right to freedom of expression under article 19 of the Covenant.

3.4 Regarding the refusal by the city authorities for him to meet with voters on 30 December 2006 as part of his election campaign, the author submits that it constituted a violation of his right to freedom of peaceful assembly under article 21 of the Covenant.

3.5 The author claims that the election-related violations discovered by him during the election campaign and the refusal of the courts to look into those violations resulted in him, an opposition candidate, not having access to the opportunity to take part in the conduct of public affairs. Additionally, the violations of the election laws resulted in violation of the rights of voters to freely express their will. The author maintains that, in that manner, the State party violated his rights as guaranteed under article 25 of the Covenant.

State party's observations on admissibility and merits

4.1 By note verbale of 6 January 2011, the State party conveyed, with regard to the present communication and several other communications before the Committee, its concern about unjustified registration of communications, such as the present one, by

[3] In support of the argument that the courts in Belarus are not independent and impartial, the author refers to the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Belarus (E/CN.4/2001/65/Add.1).

individuals under its jurisdiction who, it considers, have not exhausted all available remedies in the State party, including filing an appeal with the Prosecutor's Office for supervisory review of a judgement having the force of res judicata, in violation of article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights. It submits that the present communication was registered in violation of the provisions of the Optional Protocol, therefore, there are no legal grounds for the State party to consider it.

4.2 On 5 October 2011, the State party again challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies as he had not filed a request with a prosecutor to initiate supervisory review proceedings of his case.

4.3 In a note verbale of 25 January 2012, the State party submitted, with regard to the present communication and several other communications before the Committee that, when it acceded to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any rights protected by the Covenant. It notes, however, that that recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those that set criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5 of the Optional Protocol. The State party maintains that, under the Optional Protocol, States parties have no obligations to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Protocol, which could only be effective when done in accordance with the Vienna Convention of the Law on Treaties. It submits that, in relation to the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that references to the Committee's longstanding practice, methods of work and case law are not subjects of the Optional Protocol. It also submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Protocol and will be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications will be considered by its authorities as "invalid".

Author's comments on the State party's observations

5.1 In letters dated 30 November 2011 and 21 March 2012, the author submits that he does not consider the supervisory review initiated by the Office of the Prosecutor to be an effective domestic remedy.

5.2 Regarding the State party's challenge to the Committee's rules of procedure, the author submits that the Committee is mandated to interpret the provisions of the Covenant and its views under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument.[4] As such, the State party has an obligation to respect the Committee's decisions, as well as its "standards, practice, and methods of work".

[4] See the Committee's general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 13.

Issues and proceedings before the Committee

The State party's lack of cooperation

6.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligation to recognize the Committee's rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and that any decision taken by the Committee on the present communication will be considered "invalid" by its authorities.

6.2 The Committee recalls that article 39, paragraph 2, of the Covenant empowers it to establish its own rules of procedure, which the States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (see preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination thereof, to forward its Views to the State party and the individual (see art. 5, paras. 1 and 4). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.[5] Furthermore, it is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's argument that the author should have requested the Prosecutor's Office to initiate a supervisory review of the decisions handed down by the domestic courts. However, the Committee recalls its jurisprudence, according to which supervisory review of court decisions that have already entered into force constitutes an extraordinary remedy which does not have to be exhausted for the purposes admissibility.[6] Accordingly, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

[5] See, inter alia, communications No. 869/1999, *Piandiong et al.* v. *the Philippines*, Views adopted on 19 October 2000, para. 5.1; and No. 1948/2010, *Turchenyak et al.* v. *Belarus*, Views adopted on 24 July 2013, para. 5.2.

[6] See communication No. 1873/2009, *Alekseev* v. *Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

7.4 The Committee notes the author's claim that his rights under article 2, paragraph 3, of the Covenant have been violated, as the State party did not provide him with effective means of protection of his Covenant rights. The Committee recalls, however, that article 2, paragraph 3, of the Covenant can be invoked by individuals only in conjunction with other articles of the Covenant, and cannot, in and of itself, give rise to a claim under the Optional Protocol.[7] The Committee therefore considers that the author's contentions in that regard are inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim that his rights under article 14, paragraph 1, of the Covenant have been violated, since the election commissions and the domestic courts have refused to consider his complaints or have rejected his claims. The author also claims that the Belarusian courts are, in general, neither independent nor impartial. The Committee also notes the author's claim that his rights under article 19 of the Covenant have been violated, as the State-owned newspapers refused to publish his articles relating to the elections. However, in the absence of further information or evidence in support of those claims, the Committee finds them insufficiently substantiated for purposes of admissibility, and declares this part of the communication inadmissible, under article 2 of the Optional Protocol.

7.6 The Committee considers that the author has sufficiently substantiated his remaining claims under articles 21 and 25 of the Covenant for purposes of admissibility. It declares them admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The first issue before the Committee is whether preventing the author from holding a public meeting with potential voters in an open square at a popular venue in the centre of the town constituted a violation of the author's rights under article 21 of the Covenant.

8.3 The Committee must consider whether the restriction imposed on the author's right of peaceful assembly was justified under any of the criteria set out in article 21 of the Covenant.

8.4 The Committee recalls that article 21 of the International Covenant on Civil and Political Rights states that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed: (a) in conformity with the law; and (b) which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The Committee notes that if a State party imposes a restriction on the right protected under article 21 of the Covenant, it is up to said State party to demonstrate that the restriction was necessary and justified, and that, even, if, in principle, a State party introduces a system aimed at reconciling individuals' freedom to impart information and to participate in a peaceful assembly with the general interest of maintaining public order in a certain area, the system must not operate in a way that is incompatible with the object and purpose of article 21 of the Covenant.[8]

[7] See communication No. 1998/2010, *A.W.K* v. *New Zealand*, decision of inadmissibility adopted on 28 October 2014, para. 9.4.

[8] See, for example, communication No. 1948/2010, *Turchenyak et al.* v. *Belarus*, Views adopted on 24 July 2013, para. 7.8.

8.5 In that regard, the Committee notes that the Gomel City authorities have restricted the holding of public meetings to only one location outside of the city centre. It notes, however, that the State party has not explained why it was necessary, under domestic law and for any of the legitimate reasons set out in article 21 of the Covenant, to restrict the holding of a public meeting with potential voters to a location outside of the city centre. In addition, the State party has not explained how, in practice, the author's meeting at an open square at a popular venue in the centre of the city would have violated the rights and freedoms of others or posed a threat to public safety or public order (ordre public). In the absence of any pertinent information from the State party, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as submitted by the author reveal a violation, by the State party, of his rights under article 21 of the International Covenant on Civil and Political Rights.

8.6 The Committee must also consider whether the author's rights under article 25 of the Covenant, including the right to be elected to public office,[9] were violated by the State party's refusal to allow him to hold a public meeting with potential voters. The Committee notes the author's unchallenged allegations that he was denied the possibility of meeting with his constituents in the square near the cultural centre, "Festivalnaya", and that a distant location outside of the city was proposed as being the only location for holding such meetings. The Committee recalls its general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, which states that citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. States parties support such participation by ensuring freedom of expression, assembly and association (para. 8). Those freedoms are essential conditions for the effective exercise of the right to vote and must be fully protected (para. 12). The Committee considers the possibility of meeting with potential voters as integral to the rights guaranteed under article 25 of the Covenant, which includes the right to be elected to public office. Although the State party may establish rules and regulations governing political campaigns, those rules and regulations must not disproportionally restrict the rights guaranteed under the Covenant. In the absence of any pertinent information from the State party in that regard, the Committee concludes that the author's rights under article 25, paragraph (b), read in conjunction with article 21 of the Covenant, have been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated Mr. Sudalenko's rights under articles 21 and 25, paragraph (b), read in conjunction with article 21 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide Leonid Sudalenko with an effective remedy, including compensation. The State party is also under the obligation to take steps to prevent similar violations in the future. In that connection, the State party should review its legislation, in particular Gomel City Executive Committee Decision No. 318 of dated 11 April 2006, as it has been applied in the present case, with a view to ensuring that the rights under article 21 of the Covenant may be fully enjoyed in the State party.

[9] The author also submitted that his representatives were not included in the regional election commission; the official tallies of voters were exaggerated; and that two State-owned newspapers refused to publish his election-related articles — all in violation of article 25 of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's present Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.